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TERMINATING THE STATE OF WAR BETWEEN THE UNITED STATES AND THE GOVERNMENT OF GERMANY

JULY 18, 1951.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RICHARDS, from the Committee on Foreign Affairs, submitted the following

REPORT

[To accompany H. J. Res. 289]

The Committee on Foreign Affairs, to whom was referred the joint resolution (H. J. Res. 289) to terminate the state of war between the United States and the Government of Germany, having considered the same, report favorably thereon with amendments and recommend that the joint resolution do pass.

The amendments are as follows:

On page 1, line 8, strike out "such" and insert in lieu thereof "any"; after "proclamation" insert "issued".

On page 1, line 9, after "President", insert "pursuant thereto".

I. COMMITTEE ACTION

This resolution originated from a recommendation of the President transmitted to the Congress on July 9, 1951 (H. Doc. 188, 82d Cong.), that the state of war with Germany be terminated. A draft resolution accompanied the recommendation. On July 12, 1951, Hon. James P. Richards, chairman of the Committee on Foreign Affairs, introduced House Joint Resolution 289, a resolution similar to the draft proposed by the President.

The Committee on Foreign Affairs considered the resolution on July 16, 1951, and ordered it reported with perfecting amendments.

II. PURPOSE OF THE RESOLUTION

The purpose of this resolution is simple and straightforward: to terminate the legal state of war that has existed since December 11, 1941 (55 Stat. 796). Although hostilities ceased in May 1945, and have not since been resumed, the technical state of war still exists.

This resolution does not affect the legal state of war with Japan, declared on December 8, 1941 (55 Stat. 795), in a separate enactment. That state of war continues until terminated by any of the various legal means available.

III. DESIRABILITY OF TERMINATING THE STATE OF WAR

Policy reasons

As long as the technical state of war exists, Germany is legally still an enemy country. Yet, United States policy has for some time sought to create under the supervision of an Allied occupation, a new government—

truly representative of the German people, willing to assume its responsibilities as a member of the world community and anxious to work with its free neighbors in maintaining the peace and fostering the prosperity of Europe.

This policy is being realized in Western Germany. As the President has indicated:

approximately two-thirds of the area of prewar Germany and three-fourths of the German people are free of Soviet control, within the present borders of the German Federal Republic. The Government of the Federal Republic rests on a democratic constitution worked out by representatives of the people themselves and approved by the western occupying powers. Since its birth in September 1949, this German Government has shown steadily increasing responsibility and readiness to take its place in the community of free nations and to do its share toward building peaceful and cooperative relationships with its neighbors of the west.

On their side, the occupying powers have shown faith in the German people and in the Government of the Federal Republic by a continuing process of relaxing occupation controls on the one hand and increasing the scope of the Federal Republic Government's responsibility on the other. This process has been accompanied by a changing attitude on both sides. The relationship of conqueror and conquered is being replaced by the relationship of equality which we expect to find among freemen everywhere (H. Doc. 188, 82d Cong.).

No peace settlement has yet been made; this is a larger problem, of which the pending resolution is a part. But regardless of a peace settlement, if United States policy continues in its present direction, maintaining the legal status of an enemy becomes increasingly inconsistent. If we want Germany on the side of the free world, we cannot continue in good faith to insist that she is an enemy at the same time we encourage her to join us.

Practical reasons

At the present time, Germans traveling or doing business in this country are classed as enemies and are subject to certain disabilities, particularly as regards suits in United States courts. Ending the state of war will give Germans the same status now accorded to nationals of other friendly governments. Although commercial relations between Germany and the United States have been permitted since December 31, 1946, when the President by proclamation officially declared the hostilities ended, termination of the state of war will permit Germans to sue in our courts, and it will remove other disabilities that now hamper commercial intercourse.

IV. ACTION OF OTHER NATIONS

Enactment of this resolution will not make the United States the first nation to terminate the state of war. Nineteen other nations have taken this action beginning in March 1950. Great Britain and France, the other Allied occupying powers in Western Germany, acted on July 9, 1951, the day the President recommended similar action by the Congress.

The action of Great Britain and France (where no legislative enactment was required) was in accord with a joint statement of September 1950 by these countries and the United States of their intention:

as soon as action can be taken in all three countries in accordance with their respective constitutional requirements, to take the necessary steps in their domestic legislation to terminate the state of war with Germany.

The countries that have terminated the war and the dates of the action are as follows:

Australia: July 9, 1951.
Bolivia: March 3, 1950.
Canada: July 10, 1951.
Ceylon: July 10, 1951.
Cuba: May 25, 1951.
Denmark: July 13, 1951.
Dominican Republic: July 10, 1951.
Egypt: May 13, 1951.
France: July 9, 1951.
Great Britain: July 9, 1951.
India: January 1, 1951.
Iraq: April 1, 1951.
Italy: July 8, 1951.
Liberia: July 9, 1951.
Mexico: July 6, 1951.
Norway: July 13, 1951.
New Zealand: July 9, 1951.
Pakistan: January 5, 1951.
South Africa: July 9, 1951.

V. PRECEDENTS FOR TERMINATION OF WAR

How war is terminated

So far as the United States is concerned, officially declared wars have been terminated in three ways: by treaties of peace; by Presidential proclamation, as in the case of the Civil War; and by legislative act. The methods used in the various wars are as follows:

War of the Revolution: Treaty of Paris, 1783.
War of 1812: Treaty of Ghent, 1815.
War with Mexico: Treaty of Guadalupe-Hidalgo, 1848.
Civil War: Presidential proclamations:
The proclamation of April 2, 1866, declared that—

the insurrection which heretofore existed in the States of Georgia, South Carolina, Virginia, North Carolina, Tennessee, Alabama, Louisiana, Arkansas, Mississippi, and Florida is at an end, and is henceforth to be so regarded (13 Stat. 811).

The proclamation of August 20, 1866, made the same declaration for Texas, and further proclaimed that—

the said insurrection is at an end, and that peace, order, tranquility and civil authority now exist in and throughout the whole of the United States of America (13 Stat. 814).

War with Spain: Treaty of Paris, 1899.
First World War: Joint resolution of July 2, 1921 (42 Stat. 105); Treaty of Berlin (October 21, 1921); and President's proclamation of November 14, 1921.

Who terminates a war?

All three methods have been recognized by the courts; but whichever method is used, it is well established that terminating a war is a "political" question to be determined by the "political departments" of the Government, including the Congress. As the Supreme Court said in 1948 in *Ludecke* v. *Watkins:*

The "state of war" may be terminated by treaty or legislation or Presidential proclamation. Whatever the mode, its termination is a political act (335 U. S. 160, at 168–169).

Some earlier decisions had indicated that Congress had the power to terminate the state of war. In *Kneeland-Bigelow* v. *Michigan Central Railroad Co.*, the Court said:

> War having been declared, that condition must be recognized by the courts as existent until the duly constituted national power of the country officially declares to the contrary, even though actual warfare has long since ceased (1919, 174 N. W. 605, at 608; Hackworth, Digest of International Law, VI, p. 429).

And a year later, in 1920, in *United States* v. *Oglesby Grocery Company*, the Court said:

> The Congress and the President are the constitutional judges of states of war and peace and their decisions should be abided in patience by people and courts (264 Fed. 691, at 692).

Termination by Presidential proclamation alone

The power of the President to terminate a state of war by Presidential proclamation, as he did after the Civil War, has been upheld by the courts (*The Protector*, 1871, 12 Wallace 700; *McElrath* v. *United States*, 1880, 102 U. S. 426; *United States* v. *Anderson*, 1869, 9 Wallace 56), but this is generally held to apply only to domestic wars and not to foreign wars. And, even here, the courts recognized that Congress, by a subsequent enactment, had approved the termination dates fixed by the Presidential proclamations.

Termination by treaty of peace

The formal treaty of peace is the usual method of terminating a war with foreign nations. In the Spanish-American and the First World Wars, the peace treaty was preceded by a preliminary agreement and an armistice suspending hostilities. In the War of 1812 and the Mexican War, there was no armistice or preliminary agreement; the peace treaties were signed while hostilities were in progress.

Although a treaty of peace, duly ratified, is perhaps the most definitive method of terminating a war, it is well established that war can be terminated without a peace treaty. In *United States* v. *Hicks*, the Court said:

> Undoubtedly, if there be any doubt about it, a completely ratified treaty of peace is the best evidence of the termination of a war; but * * * such a treaty is not essential to the actual ending of a war, as has been demonstrated many times. Indeed, there is no formal or ceremonious way agreed upon in international law or otherwise for ending a war (1919, 256 Fed. 707, at 711).

In 1868, Secretary of State Seward said in a note to the Spanish Minister:

> It is certain that a condition of war can be raised without an authoritative declaration of war, and, on the other hand, the situation of peace may be restored by the long suspension of hostilities without a treaty of peace being made. History is full of such occurrences * * * (Moore, Digest of International Law, VII, p. 336).

Armistice does not terminate a state of war

It seems well established that an armistice or a suspension of hostilities does not, under our domestic law, terminate a state of war. Although a Federal district court held in 1919 that the armistice proclamation of November 11, 1918, meant the "end of the war" as defined in a statute under which a conviction was sought for operating a house of ill-fame, this holding has not been sustained (*U. S.* v. *Hicks*, 256 Fed. 707). In *Hamilton* v. *Kentucky Distilleries & Warehouse Company*, the Supreme Court of the United States, sustaining the wartime Prohibition Act of 1919, said:

In the absence of specific provisions to the contrary the period of war has been held to extend to the ratification of the treaty of peace or the proclamation of peace * * * (1919, 251 U. S. 146, at 165).

A Federal district court in New York took the same view in *Commercial Cable Company* v. *Burleson*:

It is the treaty which terminates the war * * * An armistice effects nothing but a termination of hostilities; the war still continues. It is true that the war may end by the cessation of hostilities, or by subjugation; but that is not the normal course * * * (1919, 255 Fed. 99, at 104–105).

Termination by legislative act

Termination of a state of war by legislative act of one of the parties raises a problem that does not occur in a domestic war or in a foreign war terminated by a treaty of peace—acquiescence of the other belligerent to the legal fact that resistance is at an end. A peace treaty recognizes this fact, either that the parties have agreed to end hostilities, or that one party acquiesces in the subjugation imposed by the other party. In the case of a domestic war, the proclamation is necessary to denote the end of resistance. As Professor Hyde observes:

In the case of a rebellion where the de jure government subjects to control those who took up arms against it, regaining the territory within which its authority may have been suspended, the military achievement followed by a cessation of hostilities, betokens the end of resistance, and hence signifies more than in the case of a foreign war. * * * It is appropriate * * * for the de jure government to make announcement of that fact (International Law, second revised edition, Boston, 1945, III, p. 2389).

It is now well settled that Congress can terminate a state of war by legislative act. Prior to 1921, when the legislative method was used for the first time in the joint resolution of July 2, 1921, some doubted the power of Congress to act even though the courts had dealt with the subject. However, few seriously questioned the view of Professor Corwin that—

Congress has the right * * * simply by virtue of its power to repeal its previous enactments, to declare hostilities with Germany to be at an end, and its declaration to this effect, once duly enacted, will be binding upon the courts and the Executive alike (Power of Congress To Declare Peace, Michigan Law Review, vol. 18, 1920, pp. 669–675, at p. 674.)

Others who did not question the power of Congress to act doubted whether a state of war could be terminated unilaterally. So far as international law is concerned, Professor Hyde states the prevailing view:

It is greatly to be doubted whether any principle of international law prevents the termination of war by the appropriate act of one party thereto, provided the other party to the conflict does not resume hostilities or otherwise decline to recognize the act as possessing the significance the enemy attaches to it (International Law, second revised edition, Boston, 1945, III, p. 2386).

In connection with the Allied announcement of September 19, 1950, of intention to terminate the state of war as soon as possible, the German Federal authorities were directed to prepare legislation to eliminate references to the state of war in German laws. On June 16, 1951, Germany enacted a "law repealing German war legislation." Only after this was done did the Allied Powers begin termination action.

The German law eliminated all references to a state of war where they occur in domestic legislation, including legislation of the Third

Reich. The effect is to remove all legal disabilities affecting any "enemy" nationals, i. e., states and nationals of states at war with Germany.

The enactment of this law at the direction of the Allied Powers and within the framework of legislative power granted by them to the Germans is evidence that while Germany is removing technical limitations flowing from the state of war it acknowledges at the same time the authority of the occupying powers to conduct the occupation as they see fit.

Legal confusion over termination of the First World War

Although the joint resolution of July 2, 1921, was clear and unequivocal in meaning, judicial rulings held a variety of dates as terminating the First World War, and one went so far as to hold that the joint resolution did not terminate the state of war with Germany and Austria. Generally, the confusion resulted from two things. Since all the previous wars had been terminated either by proclamation or by peace treaty, some of the courts relied on these as fixing the date rather than the joint resolution, which had been used for the first time. There was ample opportunity for the confusion in the variety of official pronouncements made by the "political departments" on the subject.

On November 11, 1918, the President, in an address to the Congress, read the armistice terms and declared, "The war thus comes to an end * * *." On June 28, 1919, the United States signed the Versailles Treaty, which provided that the war ended when the treaty came into force—upon the deposit of ratifications. The United States did not ratify the Versailles Treaty.

After the Treaty of Versailles was submitted to the Senate for action, the United States took certain administrative action that later offered grounds for varying legal interpretations. On July 14, 1919, a general enemy trade license was issued by the Department of State, authorizing all persons in the United States to trade and communicate with persons residing in Germany. Resumption of commercial relations with Germany followed. On July 15, 1919, the Postmaster General opened the mails to and from Germany. On January 15, 1920, the United States appointed an official Commissioner to Germany.

Legislative action did not entirely clarify matters. A joint resolution terminating the state of war passed the Congress in 1920 but was vetoed by the President and the veto was sustained. On March 3, 1921, the President approved a joint resolution providing that in the interpretation of such provisions as "in time of war" and "continuance of the present war" in existing statutes, the date of the resolution should be taken as the date of termination of the state of war. Then, on July 2, 1921, the President approved the joint resolution providing that the state of war declared to exist on April 6, 1917, "is hereby declared at an end" (42 Stat. 105).

On October 21, 1921, the President, with the advice and consent of the Senate, ratified the Treaty of Berlin, a treaty restoring relations with Germany. This treaty set forth the provisions of the joint resolution of July 2, 1921, but there is no mention of establishing peace in any of its operative provisions. Ratifications were exchanged

with Germany on November 11, 1921. On November 14, 1921, the President proclaimed—

> that the war between the United States and Germany terminated on July 2, 1921—

and caused the Treaty of Berlin—

> to be made public to the end that every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In view of the variety of official actions and lack of clear precedents, there is little wonder that the courts should have arrived at a variety of views, even to the point where as late as 1930 a circuit court of appeals held that for purposes of the statute of limitations in Pennsylvania, the joint resolution of July 2, 1921, did not terminate the war (*First National Bank of Pittsburgh* v. *Anglo-Oesterreichische Bank, etc.*, 37 F. (2d) 564 (CCA, 3d)). The situation is best summed up in Prof. Manley O. Hudson's observation:

> It would not seem improper to set July 14, 1919, as the date of the end of the war for purposes of trading between nationals of the two countries; to set March 3, 1921, as the date of the end of the war for purposes of applying much of America's wartime legislation; and to set July 2, 1921, as the date of the end of the war for purposes of American municipal law and claims before the Mixed Claims Commission. But there may also be some international situations in which it would be improper to say that the war ended before November 11, 1921 (The Duration of the War Between the United States and Germany, Harvard Law Review, vol. 39, 1926, pp. 1020–1045, at p. 1045).

VI. THE PRESENT LEGAL SITUATION

The present situation does not have all the elements that produced the confusion after the First World War. No peace treaty or settlement has been made, and none is under negotiation at the present time. The United States is firmly established in occupation, recognized in fact by the German authorities. When the occupation statute became effective, on September 21, 1949, German Federal Chancellor Konrad Adenauer stated:

> During the 4 years following the disaster of 1945, legislative and executive power was largely vested in the occupation power. It was only step by step that executive and legislative functions were redelegated to German authorities on various levels, and with a limited power to make decisions. * * * Now that governmental and legislative elements of the German Federal Republic are being built up, a large part of the responsibilities and the authority to make decisions will pass into German hands. We do not, of course, possess as yet complete freedom; since there are considerable restrictions contained in the occupation statute. We will do our part to bring about an atmosphere in which the Allied powers will see their way clear to apply the occupation statute in a liberal and generous manner; only in this way will the German people be able to attain full freedom.

If there is any doubt that a technical state of war still exists, holdings of the Supreme Court of the United States as recently as 1948 should remove them. In *Ludecke* v. *Watkins* the Court said:

> * * * the political branch of the Government has not brought the war with Germany to an end (1948, 335 U. S. 160, at 168–169).

And in *Woods* v. *Cloyd W. Miller Co.* the Court said:

> We have armies abroad exercising our war power and have made no peace terms with our allies, not to mention our principal enemies (1948, 333 U. S. 138, at 147).

These pronouncements were made subsequent to the President's proclamation of December 31, 1946, declaring the end of hostilities.

It is understood that when the pending resolution is enacted, the President will issue a proclamation on the date the resolution is approved, stating officially that the state of war is terminated. Together with the plain words of the resolution:

> That the state of war * * * is hereby terminated and such termination shall take effect on the date of enactment of this resolution—

there should be no doubt of the termination date. That is the purpose of this language.

VII. EFFECT OF TERMINATION UPON RIGHTS OF THE UNITED STATES AND ITS NATIONALS

Reservation of rights

The resolution does not contain any reservation of the rights of the United States except those existing under the Trading With the Enemy Act, as amended. In this respect, the resolution is different from the resolution of July 2, 1921, which reserved the right to reparations, rights under the armistice, and rights under the Treaty of Versailles.

This does not mean that the United States is forfeiting any rights. On the contrary, the resolution reserves all the rights it is believed need to be expressed explicitly. The reason it is not considered necessary to catalog the reservation of rights is that the position of the United States as an occupying power in Germany does not rest on the existence of a state of war and, except where mentioned in the resolution, these rights continue and are not affected by a termination of the state of war.

To be valid, military occupation does not necessarily require a state of war. United States military forces occupied Vera Cruz, Mexico, establishing and maintaining a military government from May to November 1914 without benefit of a state of war. The relationship of a state of war to the right of occupation was discussed in 1923 by the Military Court of the Belgian Army of Occupation in Germany. The Court said:

> Legally there can be a military occupation even in cases where there is no war properly so-called; there is nevertheless an occupatio bellica (*Auditeur Militaire* v. *Reinhardt and Others*, Annual Digest, 1923–24, Case No. 239).

Basis of United States authority in Germany

When the Allies accomplished the conquest of Germany, the existing government disintegrated and disappeared. At this point the Allies could have annexed Germany; it follows that they could take any lesser step they wished. The Allies assumed supreme authority by the declaration of June 5, 1945, but expressly disclaimed annexation.

The declaration of June 5, 1945, by the Allied Powers states:

> The German Armed Forces * * * have been completely defeated and have surrendered unconditionally and Germany * * * is no longer capable of resisting the will of the victorious powers * * * and Germany has become subject to such requirements as may now or hereafter be imposed upon her.
>
> There is no central government or authority in Germany capable of accepting responsibility for the maintenance of order, the administration of the country and compliance with the requirements of the victorious powers.
>
> It is in these circumstances necessary * * * to make provision for * * * the administration of the country * * *.
>
> The Governments of the United States of America, the Union of Soviet Socialist Republics, and the United Kingdom, and the Provisional Government of the French Republic, hereby assume supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command and any state, municipal, or local government or authority. * * *

The assumption * * * of the said authority and powers does not effect the annexation of Germany.

This declaration forms the basis of Allied authority. It has never been withdrawn or officially questioned by the German Government which succeeded the Government that carried on the war.

The supreme authority thus rightfully assumed has been and still is retained. An affirmative act by the Allies would be required to give it up. The authority derives not from the continued existence of a state of war but from the fact of conquest and assumption of supreme authority.

One aspect of this power has received the attention of the courts. In *Madsen* v. *Kinsella*, decided on September 8, 1950, the court in discussing the right of the United States to maintain occupation courts said:

It may happen, as was the case with Germany, that unconditional surrender to a conquering army completely wipes out local sovereignty, leaving the territory of the conquered nation, pending a treaty of peace, without any body of enforceable law save that which may be imposed by the conqueror. The power, as well as the duty, then devolves upon the conquering nation, through the commander in chief of its occupying army, to provide a government to take the place of that which has been overthrown. One of the essential functions of this substitute government is to enact or adopt and administer a body or code of criminal laws. Historically and according to the law of war this is accomplished through decrees of the military commander in chief, establishing the law, framing the system of courts, prescribing rules of procedure, and appointing the judges.

The power of the United States thus to govern a conquered and occupied country does not stem from any explicit provision of the Federal Constitution. It is, however, implicit in the words of that instrument which make the President the Commander in Chief of the Army and Navy. Congress is vested by the Constitution with the power to declare war, and to raise and support armies; but the President, as Commander in Chief, is given the power to wage the war which Congress has declared * * *.

To establish and maintain civil government in a conquered country is certainly a function which grows out of the power to wage war. The situation in Germany is unusual in that the occupation has lasted more than 5 years; there is still no treaty of peace; and the occupying force still exercises all governmental functions which have not been restored to the German people by the occupation statute of September 21, 1949; yet despite this prolongation, the status remains that of a temporary occupation of conquered territory, and the relationships of all persons within its boundaries are fixed and determined by the law of war.

The chain of authority whereby the military government courts were established and their jurisdiction delineated is clear. The Allied Powers, having conquered Germany, announced on June 5, 1945, their assumption of supreme authority with that country (93 F. Supp. 319, at 323 (Dist. Ct., W. Va.)).

The point was emphasized as recently as April 2, 1951, in a decision on the same case on appeal. The court said:

The authority for military government is the fact of occupation * * *. There must be a full possession, a firm holding, a government de facto.

Military government, thus founded, is an exercise of sovereignty, and as such dominates the country which is its theater in all branches of administration. Whether administered by officers of the army of the belligerent, or by civilians left in office or appointed by him for the purpose, it is the government of and for all the inhabitants, native or foreign, wholly superseding the local law and civil authority except insofar as the same may be permitted by him to subsist * * *.

The status of military government continues from the inception of the actual occupation till the invader is expelled by force of arms, or himself abandons his conquest, or till, under a treaty of peace, the country is restored to its original allegiance or becomes incorporated with the domain of the prevailing belligerent (188 F. (2d) 272, at 274 (C. C. A. 4th)).

While the point being discussed in that case was the right to maintain courts, it is equally applicable to any other right exercised under our supreme authority. It would apply to the right to maintain occupation troops, to control the administration of Germany, the right to see that all foreign rights and claims are fully protected, and that no German asserts claims against the United States or its nationals in derogation of their rights.

The position of the United States in Germany, together with the laws already in force in Germany, assure the rights of the United States. On September 20, 1945, the Allied Control Council for Germany enacted Proclamation No. 2, section VI of which provides:

> The German authorities will carry out, for the benefit of the United Nations, such measures of restitution, reinstatements, restoration, reparation, reconstruction, relief, and rehabilitation as the Allied representatives may desire.

This is still the law in Germany and will remain so long as the United States desires.

Rights reserved under the occupation statute

The Allied Governments have supreme authority in Germany and can assure any necessary action to protect our rights, in addition to the specific reservation of authority in the occupation statute. This basic law agreed upon by the occupying powers in April 1949 and put into effect on September 21, 1949, permitted the Germans to act in many fields, but reparations, restitution, foreign claims against Germany, and all other situations where foreign interests are concerned are still subjects on which the Allied Governments have reserved complete authority.

The occupation statute is explicit on the authority retained by the occupying powers. It provides as follows:

> In the exercise of the supreme authority which is retained by the Governments of France, the United States and the United Kingdom * * *
> Do hereby jointly proclaim the following Occupation Statute:
> 1. During the period in which it is necessary that the occupation continue, the Governments of France, the United States and the United Kingdom desire and intend that the German people shall enjoy self-government to the maximum possible degree consistent with such occupation. The Federal State and the participating Laender shall have, subject only to the limitations in this Instrument, full legislative, executive and judicial powers in accordance with the Basic Law and with their respective constitutions.
> 2. In order to ensure the accomplishment of the basic purposes of the occupation, powers in the following fields are specifically reserved, including the right to request and verify information and statistics needed by the occupation authorities:
>
> (a) disarmament and demilitarization, including related fields of scientific research, prohibitions and restrictions on industry and civil aviation;
> (b) controls in regard to the Ruhr, restitution, reparations, decartelization, deconcentration, nondiscrimination in trade matters, foreign interests in Germany and claims against Germany;
> (c) foreign affairs, including international agreements made by or on behalf of Germany;
> (d) displaced persons and the admission of refugees;
> (e) protection, prestige, and security of Allied forces, dependents, employees, and representatives, their immunities and satisfaction of occupation costs and their other requirements;
> (f) respect for the Basic Law and the Land constitutions;
> (g) control over foreign trade and exchange;
> (h) control over internal action, only to the minimum extent necessary to ensure use of funds, food and other supplies in such manner as to reduce to a minimum the need for external assistance to Germany;

(i) control of the care and treatment in German prisons of persons charged before or sentenced by the courts or tribunals of the occupying powers or occupation authorities; over the carrying out of sentences imposed on them; and over questions of amnesty, pardon or release in relation to them.

3. It is the hope and expectation of the Governments of France, the United States and the United Kingdom that the occupation authorities will not have occasion to take action in fields other than those specifically reserved above. The occupation authorities, however, reserve the right, acting under instructions of their Governments, to resume, in whole or in part, the exercise of full authority if they consider that to do so is essential to security or to preserve democratic government in Germany or in pursuance of the international obligations of their governments. Before so doing, they will formally advise the appropriate German authorities of their decision and of the reasons therefor.

4. The German Federal Government and the governments of the Laender shall have the power, after due notification to the occupation authorities, to legislate and act in the fields reserved to these authorities, except as the occupation authorities otherwise specifically direct, or as such legislation or action would be inconsistent with decisions or actions taken by the occupation authorities themselves.

5. Any amendment of the Basic Law will require the express approval of the occupation authorities before becoming effective * * *. The occupation authorities will not disapprove legislation unless in their opinion it is inconsistent with the Basic Law, a Land Constitution, legislation or other directives of the occupation authorities themselves or the provisions of this Instrument, or unless it constitutes a grave threat to the basic purposes of the occupation.

* * * * * * *

8. Any action shall be deemed to be the act of the occupation authorities under the powers herein reserved, and effective as such under this Instrument, when taken or evidenced in any manner provided by any agreement between them. The occupation authorities may in their discretion effectuate their decisions either directly or through instructions to the appropriate German authorities.

* * * * * * *

In order to make the point doubly sure and remove any doubt, the preamble of the proposed proclamation to be issued by the President when this resolution is enacted will indicate in express language that the action in no way affects our status in Germany or the rights of the United States and its nationals.

Rights reserved under the Trading With the Enemy Act.

The reservation in the resolution regarding seized and vested property is there for a purpose. By agreement among the occupying powers, one of the sources of reparations is external assets vested for the United States by the Office of Alien Property. The proviso in the resolution assures the continuance of these rights. The other source of reparations was capital equipment in the western zones. As a practical point, the removal program is almost completed except for certain plants already dismantled and awaiting shipment.

The position of the United States in Germany assures that these shipments will be made, and our control of our zone ensures fulfillment of our other proper reparation claims.

Immigration

Termination of the state of war will not affect the entrance of Germans into the United States under the immigration laws. The closing of consulates in Germany at the beginning of the war left Germans no means of registering or obtaining visas to enter this country. During the war, however, visas under the German quota were issued to persons of German nationality in countries other than Germany where United States consulates were open. The German quota was thus undersubscribed. At the direction of the Congress

(Public Law 774, 80th Cong.), United States consulates were opened in Germany in September 1948, and Germans were permitted to register for visas under the immigration quota.

Legally, the state of war subjected Germans entering this country to control as enemy aliens. The Department of Justice maintained control and surveillance over German nationals in the United States. Termination of the state of war would remove German nationals from the status of enemy aliens.

Patents

Termination of the state of war will not affect the status of patents involving German and United States nationals. United States patents issued to German nationals are "property or interest" under the Trading With the Enemy Act, as amended. The proviso of the pending resolution leaves operations under this act undisturbed.

United States-owned patents in Germany and German patents issued in Germany are under the control of the Allied occupation authorities, and arrangements have already been made regarding them. Allied Occupation Law No. 8 of October 20, 1949, provides for restitution of rights under United States-owned patents in Germany, extension of patent termination dates, and priority rights for filing United States patents in Germany, and other similar arrangements.

Since August 6, 1947, German nationals have applied for and obtained patents in the United States under the provisions of Public Law 380, Eightieth Congress (61 Stat. 793). However, all patents obtained are subject to—

> any conditions and limitations with respect to duration, revocation, utilization, assignment, and licensing which may be imposed by Congress, or by the President in accordance with the provisions of any peace treaty hereafter entered into with Germany * * *.

VIII. EFFECT OF TERMINATION ON DOMESTIC LEGISLATION

If this resolution sought to terminate the state of war with Japan, there would be a number of United States laws that might be affected. This is not the case in terminating the state of war with Germany.

The Bureau of the Budget made a careful check with 60 departments and agencies of the executive branch on this point. In a letter to Hon. James P. Richards, dated July 16, 1951, the Director of the Budget said:

> Each Government agency was sent a letter requesting it to describe every law with which it was concerned that would be affected by termination of the state of war with Germany. The Bureau of the Budget was asked to analyze the replies and to tabulate the laws that would be so affected * * *.
>
> All agencies replied and the only law that was revealed to be affected by the termination of the state of war with Germany as contrasted with the termination of the state of war generally was the Trading With the Enemy Act. We cannot assert categorically that there is no law that has gone unreported. Subject to that caveat it is our belief that the survey and analysis have disclosed that termination of the state of war with Germany is not likely to cancel any power or authority of material importance to Government operations or to the rights of our citizens.

IX. THE AMENDMENTS

The amendments are minor, designed solely to perfect the language. As presently worded, "such proclamation" in line 8 on page 1 has no antecedent. The amendments will correct this by making the proclamation referred to "any proclamation issued by the President pursuant thereto." The President proposes to issue a proclamation when this resolution is enacted.

X. CONCLUSIONS

The progress of policy toward Germany has outrun the legal state of affairs in our relations with that country. The United States desires to see Germany take its place alongside the free nations of Europe in the interest of maintaining the peace and stemming the tide of aggression. In this situation it is most inappropriate to retain Germany in the status of an enemy, which is the case as long as the legal state of war is maintained.

Termination of the state of war does not affect the rights of the United States in the occupation of Germany; nor does it affect any significant laws where the existence of a state of war is a material factor.

The resolution preserves and underlines the power of Congress to act in terminating the war as it acted in declaring the state of war to exist.

Nothing is lost by terminating the legal state of war; and much is to be gained by taking the action proposed in this resolution.

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82D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 707

TERESA E. DWYER

JULY 19, 1951.—Committed to the Committee of the Whole House and ordered to be printed

Mr. RODINO, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 29]

The Committee on the Judiciary, to whom was referred the bill (S. 29) for the relief of Teresa E. Dwyer, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The facts will be found fully set forth in Senate Report No. 374, Eighty-second Congress, first session, which is appended hereto and made a part of this report. Your committee concur in the recommendation of the Senate.

[S. Rept. No. 374, 82d Cong., 1st sess.]

The purpose of the bill, as amended, is to pay, out of any money in the Treasury not otherwise appropriated, to Teresa E. Dwyer, of Las Vegas, Nev., the sum of $6,316.52 in full satisfaction of her claim against the United States for compensation for personal injuries, loss of personal property, hospital and medical expenses, and loss of salary, sustained by her as a result of an accident which occurred on December 18, 1946, in Manila, Philippine Islands, while she was an authorized passenger in an Air Force jeep being driven on official business, by an Air Force civilian employee.

AMENDMENT

On page 1, line 6, strike out the figure "$15,072" and insert in lieu thereof "$6,316.52".

STATEMENT

In August 1946 the claimant accepted a position with the Department of the Army as a clerk-stenographer for service in Okinawa. On arrival at Manila, Philippine Islands, she and others scheduled to go to Okinawa were informed by the personnel office that their assignment had been changed so that they would remain in Manila. After a month in this assignment claimant found it would be necessary for her to have additional cool cotton clothing because of the climate in the Philippines as opposed to that she expected to encounter in Okinawa. Accordingly, on December 18, 1946, she was authorized by the field civilian personnel